

The Honorable Christopher M. Alston
Chapter 7
Hearing Date: November 3, 2017
Hearing Time: 9:30 a.m.
Hearing Location: 700 Stewart St, Seattle, WA
7th Floor, Courtroom 7206
Response Date: October 27, 2017

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

BEN HOLMAN McINDOE,
Debtor.

Case No. 15-17388-CMA

TRUSTEE'S MOTION FOR CIVIL
CONTEMPT AND SANCTIONS

I. INTRODUCTION

Edmund J. Wood, chapter 7 trustee for Ben Holman McIndoe, moves the Court for an order finding Richard L. Jones and Kovac & Jones, PLLC in contempt of the Court's Order for Disgorgement and Disallowance of Attorney's Fees of Special Counsel Richard L. Jones, entered by the Court on August 2, 2017, and for an award of sanctions, as follows.

II. VENUE; CORE STATUS

This court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(A) & (E). This is a core matter under 28 U.S.C. § 157(b)(2)(A) & (E).

III. PROCEDURAL BACKGROUND

1. On February 2, 2016, this court entered its Order Granting Application to Hire Richard Jones as Special Counsel for Debtor [Dkt. # 19].

1 2. On March 28, 2017, Richard Jones and Kovac & Jones, PLLC
2 (collectively, “Jones”) filed a Motion for Interim Fees [Dkt. # 93]. The hearing on the interim
3 fee application was set for May 19, 2017.

4 3. On March 31, 2017, the Office of the U.S. Trustee filed its Motion for
5 Disgorgement and Disallowance of Attorney’s Fees from Special Counsel Richard L. Jones [Dkt.
6 # 98]. The hearing on the motion for disgorgement and disallowance was set for April 28, 2017.

7 4. On April 6, 2017, Jones filed its Motion to Withdraw [Dkt. # 104] as
8 McIndoe’s special counsel in the chapter 11 bankruptcy. The hearing on the motion to withdraw
9 was set for June 9, 2017.

10 5. On April 21, 2017, Jones filed its Response to Motion for Disgorgement
11 and Disallowance of Fees [Dkt. # 105].

12 6. On April 25, 2017, the U.S. Trustee filed its reply in support of the motion
13 for disgorgement [Dkt. # 108].

14 7. On May 1, 2017, the case was converted to chapter 7 [Dkt. # 110]. Wood
15 was appointed as the chapter 7 trustee on May 2, 2017 [Dkt. # 112], and has acted in that
16 capacity at all times since. Wood Decl. at 1.

17 8. On May 2, 2017, the U.S. Trustee filed its Objection of United States
18 Trustee to Richard Jones’ Motion for Interim Fees [Dkt. # 113].

19 9. On May 5, 2017, the hearing on the Jones fee application was continued to
20 June 27, 2017. Minute entry dated May 5, 2017.

21 10. On May 12, 2017, the Court entered its Notice of Evidentiary Hearing and
22 Order Setting Deadlines [Dkt. # 121] on the U.S. Trustee’s motion for disgorgement and
23 disallowance of fees and the Jones motion for interim fees.

24 11. On June 20, 2017, the evidentiary hearing was held and the Court
25 continued the matter to June 27, 2017, for closing arguments. Minute entry dated June 20, 2017.
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1 12. On June 27, 2017, the evidentiary hearing was concluded. The Court took
2 the matter under advisement, and scheduled an oral ruling on the matter for July 27, 2017.
3 Minute entries dated June 27, 2017.

4 13. The oral ruling was held on July 27, 2017, and the Court set forth on the
5 record its findings of fact and conclusions of law [Dkt. # 175].

6 14. On August 2, 2017, the Court entered its Order for Disgorgement and
7 Disallowance of Attorney's Fees of Special Counsel Richard L. Jones [Dkt. # 175]¹ and
8 incorporated the findings of fact and conclusions of law that were made in the oral ruling on July
9 27, 2017. The order granted the U.S. Trustee's motion for disgorgement and disallowance,
10 disallowed all fees and costs requested in Jones' motion for interim fees, permitted Jones to
11 retain \$4,500 received from Amigos Financial LLC, and ordered Jones to disgorge \$39,713.99 to
12 the chapter 7 trustee within 21 days of entry of the order.

13 IV. FACTUAL BACKGROUND

14 The factual support for this motion is contained in the accompanying declaration
15 of Edmund J. Wood in support of the motion, the declaration of Geoffrey Groshong in support of
16 the motion, and the files and records in this case.

17 15. Neither Richard L. Jones nor Kovac & Jones, PLLC disgorged the
18 \$39,713.99, or any part of it, within 21 days of the order for disgorgement, or August 23, 2017,
19 as they were ordered to do. Wood declaration at 3.

20 16. On September 25, 2017, by e-mail and first-class mail, counsel for Wood
21 sent a letter to Richard L. Jones and Kovac & Jones, PLLC requesting that he disgorge the sum
22 of \$39,713.99 by 4:00 p.m. on September 26, 2017, and advised that if he failed to do so, Wood
23 would seek the aid of the Court in enforcing the order. Groshong declaration at 3.

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26 ¹ The order uses "Jones" as a defined term so that both Richard L. Jones and Kovac & Jones, PLLC are subject to
disgorgement.

1 17. As of October 4, 2017, Wood has not received the \$39,713.99, or any part
2 of it. Wood declaration at 4.

3 V. ISSUES PRESENTED

4 18. Should the Court enter an order finding Richard L. Jones and Kovac &
5 Jones, PLLC in civil contempt of the Court's Order for Disgorgement and Disallowance of
6 Attorney's Fees of Special Counsel Richard L. Jones [Dkt. # 175] and award sanctions?

7 VI. DISCUSSION

8 Neither the Federal Rules of Civil Procedure nor the Federal Rules of Bankruptcy
9 Procedure include a rule providing a remedy of civil contempt, though Fed. R. Bankr. P. 9020
10 provides that "Rule 9014 governs a motion for an order of contempt made by the United States
11 trustee or a party in interest". The basis for civil contempt motions is found in case law and
12 11 U.S.C. §105. This motion seeks an order of civil contempt, as the purpose of the order sought
13 is "... to coerce compliance with a court order or to compensate another party for the
14 contemnor's violation ..." *Placid Ref. Co. v. Terrebonne Fuel & Lube (In re Terrebonne Fuel &*
15 *Lube)*, 108 F. 3d 609, 612 (5th Cir. 1997). A bankruptcy court has authority under Section 105 to
16 carry out the provisions of the bankruptcy code. *See Caldwell v. Unified Capital Corp. (In re*
17 *Rainbow Magazine, Inc.)*, 77 F.3d 278, 284 (9th Cir. 1996); *see also Knupfer v. Lindblade (In re*
18 *Dyer)*, 322 F.3d 1178, 1197 (9th Cir. 2003) (holding that Section 105 empowers bankruptcy
19 courts to impose civil but not criminal or punitive sanctions). Another circuit has held that
20 Congress granted bankruptcy courts civil contempt power under §105. *See In re Skinner*, 917
21 F.2d 444 (10th Cir. 1990).

22 To hold a debtor in contempt, a bankruptcy court must find that the debtor clearly
23 violated a specific order of the Court. *See Stasz v. Gonzalez (In re Stasz)*, 387 B.R. 271, 276 (9th
24 Cir. BAP 2008), citing with approval *Dyer* at 1191. *Dyer* upheld a contempt order against a
25 creditor for violating the automatic stay of 11 U.S.C. § 362. To hold a debtor's special counsel
26 subject to contempt appears well within the scope of *Dyer* and *Stasz*. As set forth above and in

1 the supporting declarations of Edmund J. Wood and Geoffrey Groshong, Richard L. Jones and
2 Kovac & Jones, PLLC violated specific provisions of the Order for Disgorgement and
3 Disallowance of Attorney's Fees of Special Counsel Richard L. Jones [Dkt. # 175] by failing to
4 timely comply with the disgorgement obligations in the order.

5 VII. RELIEF REQUESTED

6 The Trustee respectfully requests the Court enter an order, in substantially the
7 form attached as Exhibit A, finding Richard L. Jones and Kovac & Jones, PLLC in contempt of
8 the Court's Order for Disgorgement and Disallowance of Attorney's Fees of Special Counsel
9 Richard L. Jones [Dkt. # 175] and imposing sanctions on Richard L. Jones and Kovac & Jones,
10 PLLC for the Trustee's fees and costs incurred in obtaining the order.

11 DATED this 5th day of October, 2017.

12 GROSHONG LAW PLLC

13
14 /s/ Geoffrey Groshong
15 Geoffrey Groshong
WSB No. 6124

16 Attorneys for Chapter 7 Trustee
17 Edmund J. Wood
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In re Ben Holman McIndoe
Case No. 15-17388-CMA

Exhibit A

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10 UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

11 In re

12 BEN HOLMAN McINDOE,

13 Debtor.
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Case No. 15-17388-CMA

[PROPOSED] ORDER GRANTING
TRUSTEE'S MOTION FOR CONTEMPT
AND SANCTIONS

16 This matter came before the Court on the motion of Edmund J. Wood, chapter 7
17 trustee for debtor Ben Holman McIndoe, for an order finding both Richard L. Jones and Kovac
18 & Jones, PLLC, jointly and severally, in contempt of the Order for Disgorgement and
19 Disallowance of Attorney's Fees of Special Counsel Richard L. Jones, and for an award of
20 sanctions [Dkt. # ____]. The Court having read the motion, the declaration of Edmund J. Wood in
21 support of the motion [Dkt. # ____], the declaration of Geoffrey Groshong in support of the
22 motion [Dkt. # ____], the notice of hearing on the motion [Dkt. # ____], the Bankruptcy Noticing
23 Center's Certificate of Service for the notice of hearing [Dkt. # ____], the proof of service filed by
24 Trustee [Dkt. # ____], any responses to the motion, any replies in support of the motion, and the
25 files and records herein; it appearing to the Court that notice of the motion is adequate and
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1 proper in the circumstances of this case; and that good cause exists to grant the motion; now,
2 therefor,

3 IT IS HEREBY ORDERED, as follows:

4 1. The motion is granted.

5 2. Richard L. Jones and Kovac & Jones, PLLC, both jointly and severally,
6 are found to be in contempt of the Order for Disgorgement and Disallowance of Attorney's Fees
7 of Special Counsel Richard L. Jones [Dkt. # 175].

8 3. Sanctions against Richard L. Jones and Kovac & Jones, PLLC, jointly and
9 severally, will be awarded to the McIndoe bankruptcy estate and paid to the Trustee. The Court
10 shall rule on the amount of sanctions for the fees and costs incurred by the Trustee in obtaining
11 this order at a future hearing.

12 /// End of Order ///

13 Presented by:

14 GROSHONG LAW PLLC
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Geoffrey Groshong
WSB No. 6124

18 Attorneys for Chapter 7 Trustee
19 Edmund J. Wood
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